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CENTRAL FAX CENTERPATENTAppl. No. 09/832,513
Amdt. dated November 29, 2006
Reply to Office Action of July 11, 2006

NOV 29 2006

REMARKS/ARGUMENTS

Upon entry of this amendment, claims 1-3, 5-16, 18-25, 30 and 31 will be pending in this application and presented for examination. Claims 14, 16 and 21 were amended. Support for the amended claims can be found in the specification. No new matter has been added. Reconsideration is respectfully requested.

Claim Rejections under 35 U.S.C. §112

Claims 14-25 and 31 were rejected for allegedly being indefinite under 35 U.S.C. §112, second paragraph. Applicants respectfully submit that these rejections should be withdrawn in light of the current amendment.

Claim Rejections under 35 U.S.C. 103

Claims 1, 3, 5-7, 9-10, 14, 16, 20-21, 25 and 30-31 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Woolston in view of eBay and in further view of Walker. Additionally, claims 2, 13, 15, and 24 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Woolston in view of eBay and in further view of Walker, and further in view of admitted prior art. Moreover, claims 8, 11, 19, and 22 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Woolston in view of eBay in further view of Walker, and further in view of Fisher. In addition, claims 12 and 23 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Woolston in view of eBay and in further view of Walker, and further in view of Shemesh. Finally, claim 18 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Woolston in view of eBay and in further view of Walker, and further in view of *Microsoft Computer Dictionary*. Applicants respectfully traverse all of the Examiner's rejections.

Claim 1

A. Woolston, eBay, and Walker do not, alone or in combination, teach or suggest a warranty associated with a merchandise inspection report

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Applicants respectfully submit that Woolston, eBay, and Walker do not, alone or in combination, teach or suggest "merchandise inspection report including a warranty as an assurance to said buyer, the warranty being associated with said merchandise inspection report", as recited in claim 1 (emphasis added).

The Examiner conceded that "Woolston does not teach *the inspection report includes a warranty wherein the warranty is associated with the merchandise inspection report.*" Page 7 of the Office Action mailed July 11, 2006. However, the Examiner asserted that it would have been obvious to a person of ordinary skill in the art to modify the inspection report of Woolston to include a warranty as taught by Walker.

But Walker fails to disclose the warranty as recited in claim 1. For example, the warranty ensures the accuracy of the inspection report. In another example, a potential bidder or buyer, seeing the warranty attached to the inspection report, would know that the merchandise inspection report should accurately describe the merchandise item in an "as is, where is" condition.

In contrast, Walker discloses a warranty that is available after there have already been an offer and an acceptance between the buyer and the seller. Hence, Walker teaches a warranty for the auctioning item, not for the inspection report itself. More specifically, Walker discloses the following:

According to one aspect of the invention, once a CPO is accepted by a seller, but before completing the transaction, the goods are preferably forwarded to a dealer/authenticator for evaluation. The dealer/authenticator can be part of the collectible CPO management system or another third party having knowledge of the subject goods. The dealer/authenticator preferably validates, authenticates and optionally guarantees the goods, while also serving as the distribution point for the collectibles sold by the collectible CPO management system. As used herein, validation establishes that the item actually exists. Authentication proves that the item is in the condition stated by the accepting seller. The, guarantee, if desired, insures that the buyer has not purchased a counterfeit item or an item of unacceptable quality. (emphasis added; Walker, column 3, lines 40-52).

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As shown above, Walker teaches a warranty for the auctioning item, not for the inspection report itself. In addition, the Examiner appears to have erroneously reached the conclusion that "where an inspection occurs the warranty is always associated with the inspection". (see page 8 of the Office Action). It appears that such hindsight conclusion is not disclosed or suggest by Woolston and Walker in any manner. For example, inspections, as explained by the Webster dictionary, is "a checking or testing of an individual against established standards" (the definition is available online at: <http://www.webster.com/dictionary/inspection>), and no where is "warranty" (or its synonyms) mentioned in this explanation. Simply put, "inspection" means "inspection"; "inspection" doesn't mean "inspection with an inspection warranty provided". It is not that, as the Examiner mistakenly concluded, "company spend money on an inspection and then disregard the results". (see page 8 of the Office Action). Often, due to one reason or another (such as human error), defects are not detected by an inspection. As other times, an entity merely performs a perfunctory inspection. As a result, the entity spends money on an inspection but does not have the confidence to attest the inspection report. In contrast, the claim limitation explicitly provides that "the warranty is associated with said merchandise inspection report". For example, the warranty for the inspection report indicates that the entity performing the inspection has the confidence to attest the inspection report and the inspection report is reliable.

Accordingly, claim 1 is asserted to be allowed for at least the above reasons.

B. Woolston, eBay, and Walker do not, alone or in combination, teach or suggest conducting presale inspection

Woolston, alone or in combination with eBay and/or Walker, fails to disclose the limitation in claim 1 reciting "an assurance module coupled to said preregistration module for conducting a presale inspection of said merchandise item and to generate a merchandise inspection report." For example, the presale inspection occurs, as the term "presale" suggests, before the auction system even puts a merchandise item on sale. In claim 1, the assurance module in claim 1 provides a warranty with respect to the accuracy of the merchandise

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inspection report. By way of an example, when a merchandise item is listed for sale, the inspection of that merchandise item would have already been performed by an impartial third party and bidders would be able to rely on the information from the inspection report and be able to bid accordingly. In an auction system, it would often be advantageous and efficient for bidders to have more information from the inspection report when bidding for a merchandise item.

In contrast, the assurance that Woolston discloses appears to relate to the trustworthiness of the transaction and the absence of fraud. The relevant part of Woolston as cited by the Examiner discloses the following:

These procedures may be used to give assurances and create trust to participants, who for example would like to buy and art deco collectable from a collectable shop in Russia but is very reluctant to send credit card information to an unknown Russian collectable shop for the obvious concerns of credit card fraud and/or fraud in the bona fides of the collectable good itself. (Woolston, column 18, lines 46-52).

The Examiner explained that "in order to provide the assurance of the bona fide nature of the goods and to provide subjective criteria as to authenticity, the consignment node must inspect the good prior to electronically presenting." (*emphasis added*; page 4 of the Office Action mailed July 11, 2006). Applicants respectfully disagree. To provide the assurance of the bona fide nature, the consignment node does not have to inspect the good. There could be various ways to provide assurance of the bona fide nature of the goods. For example, the consignment node may provide assurance based on prior dealings or reputation of a certain seller, not based on the result of any inspection.

Additionally, Walker teaches against having an inspection report and a warranty associated thereof before a sale. The timing of the inspection report and its warranty is often an important aspect in an auction system. In Walker, the per item transaction cost may arguably be lower than the auction system of the present invention, as an inspection is only conducted where there have already been an offer and an acceptance between the buyer and the seller. Walker's

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system would not incur costs associated with inspection for every merchandise item that is being auctioned.

In contrast, according to an embodiment of the present invention, claim 1 can make quality control and inspection information available to bidders before bidders place their bids. For example, even if a bidder knows that the finalization of transaction is conditioned upon the final validation or inspection by an impartial third party, the bidder is faced with wasting time bidding on merchandise items with potentially unacceptable quality, and that deters bidders from placing their bids. In an embodiment of present invention, bidders, knowing that an impartial third party has already inspected the merchandising item, would have been more willing to place bids.

Therefore, Woolston, alone or in combination with eBay and Walker, fails to disclose the limitation in claim 1 reciting "an assurance module coupled to said preregistration module for conducting a presale inspection of said merchandise item and to generate a merchandise inspection report."

Accordingly, claim 1 is asserted to be allowed for at least the above reasons.

C. Woolston, eBay, and Walker do not, alone or in combination, teach or suggest removing a merchandise item from an auction system if the seller does not agree with the merchandise inspection report

Woolston, alone or in combination with eBay and/or Walker, fails to disclose the limitation in claim 1 reciting "auction system removes said merchandise item from said auction system if a seller of said merchandise item does not agree with said merchandise inspection report generated by said assurance module."

The Examiner suggested that "Woolston teaches a de-post feature that may be used when a seller does not want the consignment node user to post the item any longer." (see page 6 of the Office Action mailed July 11, 2006). In addition, the Examiner cited the following:

The de-post module 724 may use the bar code scanner 730 to receive a posted collectible's identification code. The de-post module 724 may call the de-post request routine 728 to establish communications between the posting terminal 700 and the

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market maker computer 800. The de-post request module 728 sends the item or collectible bar code to the post/de-post handler 802. The post/de-post handler 802 may remove the collectible identified by the bar code from the for-sale database 814, if the de-posting terminal identification has legal title to the identified collectible as indicated in a for-sale record, the market maker computer 800 may send a de-post confirm code to the posting terminal 700. The posting terminal 700 may process the confirm signal by indicating that the de-posting procedures was performed. (Emphasis added; Woolston c17, lines 41-55).

Examiner explained that "Examiner interprets this as being applicable when a seller does not agree with the inspection report performed by the consignment node (e.g., impartial third party)". (see page 6 of the Office Action). Applicants respectfully disagree. While the "de-post" feature in Woolston allows a "posted" item to be taken down from being posted, Woolston does not teach or suggest "an auction system removes said merchandise item from said auction system if a seller of said merchandise item does not agree with said merchandise inspection report generated by said assurance module." For example, Woolston teaches the mechanism that provides the "de-posting" to allow a party making the post to remove the post. (See column 14, lines 61-64). Woolston further explains that "de-post" process ensures that only entity holding the legal tile may "de-post". (see column 17, lines 55-60). Woolston does not teach removing a merchandise item for satisfying the condition that "a seller of said merchandise item does not agree with said merchandise inspection report generated by said assurance module." In short, Woolston discloses removing item from the consignment nodes, but does not disclose the specific condition (as stated in the claim) that causes such removal.

The defect of Woolston as explained above is not cured, as the Examiner suggested, by eBay. According to the eBay's *Frequently Asked Questions on Selling* (as cited and provided by the Examiner, hereinafter "FAQ"), eBay provides a feature for a user to perform a user initiated process to end the auction. The FAQ merely provided that the user have the ability to end a listing, much like the "de-post" feature in Woolston, and yet it still does not teach removing a merchandise item for satisfying the condition that "a seller of said merchandise item does not agree with said merchandise inspection report generated by said assurance module."

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Additionally, the "end your auction" feature that was cited by the Examiner and may be used by a user who wishes to edit an item's listing after a bid has been accepted is not relevant to the claim limitation. Among other things, the claim limitation recites "removing the merchandise item for satisfying the condition", not merely providing user with an option to end the listing.

More specifically, eBay does not teach the condition that "a seller of said merchandise item does not agree with said merchandise inspection report generated by said assurance module." The Examiner, on the second paragraph of page 7, states that "[i]n other words, Ebay teaches a user canceling an auction if he/she does not agree with the listing." Page 7 of Office Action mailed July 11, 2006. Hence, the Examiner seems to have mistakenly equivocated "listing" to "inspection report". A listing and an inspection report are by definition different things. For example, according to eBay's online guide, a listing is created by a user, who enters the item descriptions and other information (e.g., pictures, categories, etc.). (See Appendix A). An inspection report, by definition, requires inspection. There is no teaching or suggestion of inspection or inspection report by eBay nor of third party inspection warranty.

The Examiner also suggested that since claim 1 is an apparatus claim, the claim covers what the device is, not what the device does. Applicants respectfully disagree. Among other things, what is suggested by the Examiner is inconsistent with the law. In *Hoffer v. Microsoft Corp.*, the court held that when a "'whereby' clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention." (405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483) (Fed. Cir. 2005). Among other things, "removing a merchandise item from an auction system if the seller does not agree with the merchandise inspection report" is one of the material features of the system and thus in a way defines what the system does. Therefore, the claim limitation differentiates the auction system according to the embodiments of the present from the cited reference. In addition, assume, *arguendo*, that the above identified claim limitation for claim 1 is not given patentable weight by the Examiner, Applicants respectfully assert that claim 14 is a method claim that recites similar claim limitations, which should be considered.

Therefore, Woolston, alone or in combination with eBay and/or Walker, fails to disclose the limitation in claim 1 reciting "auction system removes said merchandise item from

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said auction system if a seller of said merchandise item does not agree with said merchandise inspection report generated by said assurance module."

Accordingly, claim 1 is asserted to be allowed for at least the above reasons.

Response to Examiner's Arguments

Applicants respectfully submit that Examiner's arguments made in the Office Action mailed July 11, 2006 are insufficient to support the Examiner's rejections.

The Examiner argued, on pages 16 and 17 of the Office Action, that "since Woolston includes an inspection that ensures the quality of good any warranty added/modified to Woolston would include a warranty associated with the inspection." Applicants respectfully disagree. More specifically, as explained above, an inspection is merely "a checking or testing of an individual against established standards". An inspection can be good or bad for a variety of factors. An inspection does not ensure the quality of goods. Warranty does. That is why "inspection" and "warranty" are two words describing two concepts.

The Examiner also argued that the combination of Woolston and Walker teaches "presale" inspection. The Examiner readily conceded, in page 18 of the Office Action, that Walker does not teach the timing (i.e., presale) of the inspection. The Examiner suggested that Woolston, in column 4 lines 30-35, teaches the correct timing, as Woolston discloses "it should be noted the consignment node user (third party) may again 'add value' to his consignment node by entering subjective criteria in the database entry for authenticity, condition, special attributes and the like." (emphasis added). The Examiner seems to have mistakenly interpreted consignment node user as a third party performing inspection, as Woolston explicitly states, in the same paragraph (column 4, lines 9-12), that "the consignment node user is the legal and equitable owner". The consignment node user may be a third party, but by being the legal and equitable owner, the consignment node user is anything but *impartial*. As far as impartiality is concerned, the consignment node user is no different from a seller and thus is not a third party performing presale inspection. Therefore, Woolston and Walker, alone or in combination, do not disclose presale inspection.

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The Examiner also argued that new ground of rejections is provided for the claim limitation "removing a merchandise item from an auction system if the seller does not agree with the merchandise inspection report". Applicants respectfully submit the new ground of rejections is improper in light of the arguments made above.

Remaining Claims

In light of the above, it is asserted that claims 2-3, 5-16, 18-25, 30 and 31 are allowable for substantially the same reason as claim 1, and more particularly for the specific features they recite.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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Creating a Listing

To list your item on eBay, you need to provide information about your item. Information in a typical listing includes a title, description, price, payment method, shipping costs, and photo. eBay's Sell Your Item form guides you through the steps to create and submit an item listing. If you are new to selling on eBay, see [Selling -- Getting Started](#).

To create a listing:

1. Go to eBay's Sell Your Item form by clicking the **Sell** button at the top of any eBay page.
2. Complete the Sell Your Item form.
You will be asked to:
 - **Select a category** — To find an appropriate category for your item, enter keywords into the search box labeled "What are you selling?" and then click the **Sell It** button.
 - **Write a good title and description** — Buyers usually find listings based on their titles, so be sure to write a good one for your listing. Creating descriptions that are clear, complete, and descriptive will help you sell your item.
 - **Enter item specifics** — Providing additional item details within a category helps buyers find your item. Not all categories have item specifics.
 - **Upload pictures** — Including good quality, evenly lit photos of your item helps sell your item. You can add and enhance pictures using eBay Picture Services.
 - **Select a listing format** — Understanding the different types of auction and fixed price formats and their pricing options helps you become an efficient seller.
 - **Select a price** — This includes deciding on a starting price and pricing options such as reserve price and Buy It Now to help you get the price you want for your item.
 - **Select a listing duration** — You can have your listing last from 1 to 10 days. Most auction listings last 7 days.
 - **Provide payment information** — Choose the payment methods you'll accept from buyers. eBay recommends offering PayPal to accept credit card or checking account payment.
 - **Provide shipping information** — Specify your ship-to locations as well as the shipping services you offer. You can charge a flat shipping cost or have shipping costs automatically calculated.
 - **Specify your return policy** — Buyers are more comfortable shopping from sellers who offer return policies.
 - **Select listing upgrades** — Listing upgrades such as bold, highlight and border can help you promote your item.

Tip: You are required to provide only the title, description, and price. However, providing pictures, details about payment options, shipping, and your return policy will reduce the time you spend answering questions from buyers.
3. Review your listing. You will see a preview of your listing page. If you see something that needs to be changed, click the "Edit listing" link.
4. (Optional) To create a template from the listing, select the "Save this listing as a template" check box.
5. Click the **List Item for Sale** button to list your item on eBay.

Note: If you start to create a new listing in the Sell Your Item form but aren't able to finish it, eBay will save it as a draft so that you can complete it later. To finish your draft listing, click the **Sell** button at the top of most eBay pages, and then click the item title link.

Related Help topics

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